

**REMARKS**

In the Office Action, a double patenting rejection was made to the claims. If the Examiner believes the claims otherwise allowable, Applicant is willing to submit a Terminal Disclaimer, if the rejection is still deemed warranted in view of the amended claims. In the Office Action, the claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over various combinations of U. S. Patent No. 6,208,663 (Schramm et al.), U. S. Patent No. 6,735,180 (Malkamaki et al.); U. S. Patent No. 6,760,860 (Fong et al.), U. S. Patent No. 6,529,561 (Sipola), U. S. Patent No. 6,128,276 (Agee) and U. S. Patent Publication No. 2002/0037058 (Birru).

In the present claims, the physical layer ARQ mechanism is transparent to the higher layer ARQ mechanism. Fong clearly teaches a physical layer mechanism which operates in cooperation with a radio link layer ARQ mechanism. These two ARQ mechanisms communicate between each other to verify that there is not a redundant transmission of data. Also, the Fong et al. reference implies that the data packets are retransmitted on each of the ARQ mechanisms and that they are also the same size. The present claims refer to the physical layer ARQ mechanism being transparent to the higher layer ARQ mechanism. This is clearly not the case in Fong where they clearly interact with one another and are not transparent to each other. As previously described, this transparency allows for the physical layer ARQ mechanism to be added on top of an existing higher ARQ mechanism to improve data transmission without any modification to the higher layers. The

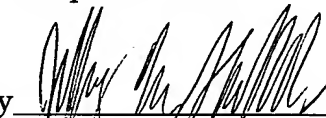
present claims also refer to that the higher layer ARQ mechanism utilizes data blocks and the physical layer ARQ mechanism uses packets which are smaller in size than the data blocks. The transmission of the smaller size data blocks allows for a faster transmission and retransmission of data than applied by the slower moving higher layer data blocks. Accordingly, Applicant respectfully submits that the amended claims are allowable, since none of the other references cure this lack of teaching in Fong et al.

Reconsideration and entry of this amendment is respectfully requested.

Respectfully submitted,

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